

YAVAPAI COUNTY ATTORNEY'S OFFICE
JOSEPH C. BUTNER SBN 005229
DEPUTY COUNTY ATTORNEY
255 East Gurley Street
Prescott, AZ 86301
Telephone: 928-771-3344
ycao@co.yavapai.az.us

CLERK
NOT DEPOSITORY
2010 APR 12 AM 9:50
L. Hamilton
DEPUTY CLERK

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S MOTION IN LIMINE RE
VOLUNTARINESS OF DEFENDANT'S
STATEMENTS

COMES NOW Sheila Sullivan Polk, Yavapai County Attorney, by and through her deputy undersigned, and files its Motion in Limine requesting a pretrial determination of the voluntariness of statements made by Defendant. On July 2, 2008, and at the time of his arrest on October 23, 2008, Defendant made certain statements to law enforcement officers. The State requests that the Court rule that those statements were voluntary and admissible.

MEMORANDUM OF POINTS AND AUTHORITIES

In Arizona, confessions are prima facie involuntary and the State has the burden of showing by a preponderance of the evidence that the confession was freely and voluntarily made. *State v Tapia*, 159 Ariz. 284, 767 P.2d 5 (1988); *See also State v. Knapp*, 114 Ariz. 531, 562 P.2d 704 (1977) *cert. den.*, 435 U.S. 908 (1978).

1 Confessions are involuntary if the court, considering all the
2 circumstances, determines that one of the following factors exists: 1)
3 impermissible conduct by police; 2) coercive pressures not dispelled;
or 3) confession derived directly from a prior involuntary statement
(citations omitted).

4 *Tapia* at 288, 767 P.2d at 9.

5 Additionally, "(t)he trial judge in determining the issue of voluntariness shall take
6 into consideration all the circumstances surrounding the giving of the confession." A.R.S.
7 §13-3988 (B) (emphasis added).
8

9 In this case, the police conduct was appropriate and permissible, and there was no
10 coercion involved. Additionally, Defendant's statements were not derived from any prior
11 involuntary statements. Based upon the testimony that will be given, and considering the
12 totality of the circumstances, this Court will find that any statements Defendant made were
13 freely and voluntarily made. Here, Defendant voluntarily spoke to law enforcement after
14 Carol's body was discovered on July 2, 2008, and when he was arrested on October 23, 2008.
15

16 Defendant spoke with Det. Brown both on the telephone and in person when
17 Defendant arrived at the Bridal Path residence. Defendant also spoke to Sgt. Huante and
18 Cmdr. Mascher while outside the Bridal Path residence. Brown asked Defendant if he would
19 agree to accompany him to the Sheriff's Office to discuss the matter further and Defendant
20 agreed. There Defendant was interviewed at length to try to gather information regarding
21 Carol's activities prior to her murder. Defendant was told on numerous occasions he was
22 free to leave. He replied that he wanted to cooperate and voluntarily stayed to answer the
23 detectives' questions. Det. Brown read Defendant his *Miranda* rights. Defendant stated he
24 understood his rights and continued to answer the detectives' questions. On several
25
26

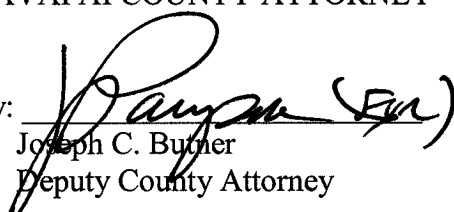
1 occasions, Defendant stated he would help in any way he could. After questioning and the
2 execution of the search warrant at the Alpine Meadows residence, Defendant was released.

3 On October 23, 2008, Defendant was arrested at a UBS office in Phoenix. Lt.
4 Rhodes, Det. McDormett and Sgt. Huante were present. McDormett read Defendant his
5 *Miranda* rights. Defendant stated that his attorney suggested that "he be around" if
6 Defendant spoke to law enforcement. Lt. Rhodes explained that attempts had been made to
7 arrange a meeting but Defendant's attorney had not responded. Rhodes told Defendant he
8 did could answer the questions or not as he chose and could listen to the questions before he
9 decided whether to answer them. Defendant stated he wanted to speak with law enforcement
10 and voluntarily answered questions.

11 The State intends to use these statements at trial and requests that the Court scheduled
12 a hearing to determine that the statements are voluntary and admissible.
13
14

15
16 RESPECTFULLY SUBMITTED this 12th April, 2010.

17
18 Sheila Sullivan Polk
19 YAVAPAI COUNTY ATTORNEY

20 By: 
21 Joseph C. Butler
22 Deputy County Attorney

23 ///

24 ///

25 ///

26 ///

Office of the Yavapai County Attorney
255 E. Gurley Street, Suite 300
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 COPIES of the foregoing delivered this
2 15th day of April, 2010 to:

3 Honorable Thomas J. Lindberg
4 Division 6
5 Yavapai County Superior Court
6 (via email)

7 John Sears
8 511 E.. Gurley St.
9 Prescott, AZ 86301
10 Attorney for Defendant
11 (via email)

12 Larry Hammond
13 Anne Chapman
14 Osborn Maledon, P.A.
15 2929 North Central Ave, 21st Floor
16 Phoenix, AZ
17 Attorney for Defendant
18 (via email)

19 By: DeLo Connell
20
21
22
23
24
25
26